

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/970,161
Confirmation No.: 9581
Filing Date: October 2, 2001
Inventors: Stephan Wahlbin

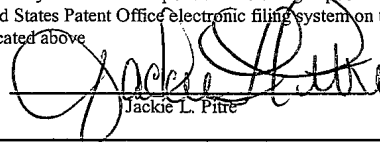
Examiner: Gottschalk, M.
Art Unit: 3696
Atty. Dkt. No: 5053-46912

Title: COMPUTERIZED
METHOD AND SYSTEM
FOR PROVIDING
CLAIMS DATA TO AN
ACCIDENT LIABILITY
ASSESSMENT
PROGRAM

CERTIFICATE OF ELECTRONIC TRANSMISSION
UNDER 37 C.F.R. §1.8

DATE OF DEPOSIT: 2/9/09

I hereby certify that this correspondence is being deposited with
the United States Patent Office electronic filing system on the
date indicated above


Jackie L. Pire

AMENDMENT; REPLY TO EXAMINER'S ANSWER
UNDER 37 C.F.R. §1.111; REQUEST TO REOPEN
PROSECUTION UNDER 37 C.F.R. §41.39(b)(1)

Mail Stop Amendment

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

Sir:

Please amend the above-identified application as follows:

Amendments to the Claims are reflected in the listing of claims that begins on page 2 of
this paper.

Remarks begin on page 12 of this paper.

Amendments to the Claims:

The following listing of claims will replace all prior versions and/or listings of claims in the application.

Listing of Claims:

1-752. (Cancelled).

753. (Previously presented): A method, comprising:

providing claim data regarding a vehicle accident to a computer system via a graphical user interface;

providing data regarding at least one vehicle involved in the vehicle accident to the computer system via the graphical user interface;

providing an assessment of the vehicle accident to the computer system via the graphical user interface, the assessment of the vehicle accident comprising an assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident;

displaying a consultation report via the graphical user interface, wherein displaying a consultation report comprises displaying the assessment of the liability of the insured party; and

storing the claim data regarding the vehicle accident, the data regarding at least one vehicle involved in the vehicle accident, and the assessment of the vehicle accident in a memory associated with the computer system.

754. (Cancelled).

755. (Previously presented): The method of claim 753, wherein the consultation report comprises the claim data, the data regarding the at least one vehicle, and the assessment.

756. (Previously presented): The method of claim 753, wherein the consultation report comprises a range of liability for an insured party involved in the vehicle accident, wherein the liability is a proportion of the total liability for the accident.

757. (Original): The method of claim 753, wherein the claim data comprises policy data.

758. (Original): The method of claim 753, wherein the claim data comprises policy data, and wherein the policy data comprises a claim number, a policy number, policy limits, or policy dates.

759. (Original): The method of claim 753, wherein the claim data comprises information regarding parties involved in the vehicle accident.

760. (Cancelled).

761. (Original): The method of claim 759, wherein the parties comprise one or more witnesses.

762. (Original): The method of claim 759, wherein the information regarding the parties involved in the vehicle accident comprises a description of the vehicle accident provided by at least one of the parties.

763. (Original): The method of claim 753, wherein the claim data comprises a location, a date, and a time of the vehicle accident.

764. (Cancelled).

765. (Original): The method of claim 753, wherein the claim data comprises content of a police report regarding the vehicle accident.

766. (Original): The method of claim 753, wherein the claim data comprises whether there were injuries in the vehicle accident.

767. (Original): The method of claim 753, wherein the claim data comprises a jurisdiction in which the vehicle accident occurred.

768. (Cancelled).

769. (Original): The method of claim 753, wherein the claim data comprises a number of vehicles involved in the vehicle accident.

770. (Original): The method of claim 753, wherein the data comprises a type of the at least one vehicle involved in the vehicle accident.

771. (Cancelled).

772. (Previously presented): The method of claim 753, wherein the assessment of the vehicle accident comprises a symbolic representation of an accident type, wherein the accident type is selected by a user, further comprising displaying the symbolic representation.

773. (Original): The method of claim 772, wherein the accident type is selected from the group consisting of a rear ender, a left turn crossing traffic, a left turn across traffic, a left turn entering traffic, a right turn entering traffic, dual turns to same lane, concurrent left turns, a U-turn, a parked vehicle merging into traffic from right, a parked vehicle merging into traffic from left, a merge from left, a merge from right, concurrent merges to a single lane, a collision with a parked vehicle, a collision while backing, a head on, and a straight cross traffic collision.

774. (Previously presented): The method of claim 753, wherein the assessment of the vehicle accident comprises a symbolic representation of a roadway configuration at a location of the vehicle accident, wherein the roadway configuration is selected by a user, further comprising displaying the symbolic representation.

775. (Original): The method of claim 774, wherein the roadway configuration is selected from the group consisting of a two or more lane road, a divided road with a median that can be crossed, a four-way intersection, a T-angle intersection, a merging of one roadway into another, a curve, a parking lot with two-way traffic, a parking lot with one way traffic, a center turn lane, and a two or more lane road divided by a physical barrier.

776. (Previously presented): The method of claim 753, wherein the assessment of the vehicle accident comprises an impact point of the at least one vehicle involved in the vehicle accident, wherein the impact point is selected by the user, wherein the proportion of liability of the insured party is at least partially based on the impact point.

777. (Previously presented): The method of claim 776, further comprising displaying a symbolic representation of the impact point selected by the user.

778. (Original): The method of claim 776, wherein the impact point is selected from the group consisting of right front corner, right front fender, right middle, right rear quarter-panel, right rear corner, rear middle, left rear corner, left rear quarter-panel, left middle, left front fender, left front corner, and front middle.

779. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises a description of the vehicle accident.

780. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises environmental conditions at a location of the vehicle accident.

781. (Cancelled).

782. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises a condition of a driver of the at least one vehicle involved in the vehicle accident.

783. (Original): The method of claim 782, wherein the condition of the driver comprises an effect of alcohol, illicit drugs, prescription drugs, driver inattention, corrective lenses, driver inexperience, driver fatigue, or driver illness.

784. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises human actions.

785. (Original): The method of claim 784, wherein the human actions comprise following too closely, driving with headlights off, driving at an unsafe speed, a sudden stop or swerve, a failure to take evasive action, driving with high beams on, an improper lane change, improper parking, or improper signaling.

786. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises an assessment of a condition of the at least one vehicle involved in the accident.

787. (Original): The method of claim 786, wherein the condition comprises defective equipment.

788. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises a speed limit at a location of the vehicle accident.

789. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises a speed of the at least one vehicle involved in the vehicle accident.

790. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises identification of traffic controls at a location of the vehicle accident.

791. (Original): The method of claim 790, wherein the traffic control is selected from the group consisting of a red light, a yellow light, a green light, a left turn arrow, a right turn arrow, a stop sign, a yield sign, a flashing red light, a flashing yellow light, a police officer signaling stop, a police officer signaling proceed, a crossing guard signaling proceed, a crossing guard signaling stop, a flagger signaling proceed, a flagger signaling stop, another person signaling proceed, another person signaling stop, an emergency vehicle, and a school bus.

792. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises a determination of whether traffic control devices were obeyed by the at least one vehicle involved in the vehicle accident.

793. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises a determination of whether traffic controls were defective at a location of the vehicle accident.

794. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises a determination of whether the at least one vehicle involved in the vehicle accident was defective.

795. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises a determination of whether roadway debris was present at a location of the vehicle accident.

796. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises a determination of whether roadway defects were present at a location of the vehicle accident.

797-798. (Cancelled).

799. (Original): The method of claim 753, wherein the assessment of the vehicle accident comprises a determination of whether occupants in the at least one vehicle involved in the vehicle accident were wearing seatbelts.

800. (Previously presented): A system, comprising:

a CPU;

a data memory coupled to the CPU; and

a system memory coupled to the CPU, wherein the system memory is configured to store one or more computer programs executable by the CPU, and wherein the computer programs are executable to implement a method for estimating liability, the method comprising:

providing claim data regarding a vehicle accident via a graphical user interface;

providing data regarding at least one vehicle involved in the vehicle accident via the graphical user interface;

providing an assessment of the vehicle accident via the graphical user interface, the assessment of the vehicle accident comprising an assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident;

displaying a consultation report via the graphical user interface, wherein displaying a consultation report comprises displaying the assessment of the liability of the insured party; and

storing the claim data regarding the vehicle accident, the data regarding at least one vehicle involved in the vehicle accident, and the assessment of the vehicle accident in the data memory.

801. (Currently amended): A ~~carrier~~computer readable storage medium comprising program instructions stored thereon, wherein the program instructions are computer-executable to implement a method comprising:

providing claim data regarding a vehicle accident to a computer system via a graphical user interface;

providing data regarding at least one vehicle involved in the vehicle accident to the computer system via the graphical user interface;

providing an assessment of the vehicle accident to the computer system via the graphical user interface, the assessment of the vehicle accident comprising an assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident;

displaying a consultation report via the graphical user interface, wherein displaying a consultation report comprises displaying the assessment of the liability of the insured party; and

storing the claim data regarding the vehicle accident, the data regarding at least one vehicle involved in the vehicle accident, and the assessment of the vehicle accident in a memory associated with the computer system.

Claims 802-844. (Cancelled)

845. (Previously presented): The method of claim 753, further comprising selecting a roadway configuration corresponding to the vehicle accident and an accident type corresponding to the

vehicle type, wherein the combination of the roadway configuration and the accident type are associated with a plurality of pairs of impact points.

846. (Previously presented): The method of claim 845, wherein the proportion of liability of the insured party is based on a liability corresponding to one of the pairs of impact points.

847. (Previously presented): The method of claim 753, further comprising displaying a plurality of combinations of a roadway configuration and an accident type, and receiving a selection by a user of one of the combinations for the vehicle accident being assessed, wherein the assessment of liability for the vehicle accident is based on the selected combination.

848. (Previously presented): The method of claim 847, wherein the display of the plurality of combinations of roadway configurations and accident types comprises one or more indicators that one or more of the combinations is implausible.

849. (Previously presented): The method of claim 753, wherein the assessment of liability of the insured party comprises a base liability, and upper range a liability, and a lower range of liability.

850. (Previously presented): The method of claim 753, further comprising:
displaying a graphical representation of at least one vehicle and a plurality of impact points for the at least one vehicle, wherein the impact points are selectable by a user; and
receiving a selection by a user of one or more of the impact points corresponding to the vehicle accident.

851. (Previously presented): The method of claim 753, further comprising:
displaying a graphical representation of at least two vehicles and a plurality of impact points for the at least two vehicles, wherein the impact points are selectable by a user; and
receiving a selection by a user of one or more of the impact points for each of the vehicles corresponding to the vehicle accident.

852. (Previously presented): The method of claim 753, wherein the proportion is expressed as a percentage.

Remarks/Arguments

A. Pending Claims

Claim 801 has been amended. Claims 753, 755-759, 761-763, 765-767, 769, 770, 772-780, 782-796, 799-801 and 847-852 are pending in the case.

B. Request to Reopen Prosecution

The Examiner's Answer mailed December 9, 2008 contains a new ground of rejection under 35 U.S.C. § 101. (See Examiner's Answer, page 4). In accordance with 37 C.F.R. § 41.39(b) Applicant has the option to (1) Reopen Prosecution or (2) Maintain appeal to avoid *sua sponte* dismissal of the appeal. By this response, Applicant requests that prosecution be reopened in accordance with 37 C.F.R. § 41.39(b)(1).

C. Rejections Under 35 U.S.C. § 101

The Examiner rejected claim 801 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. The Examiner takes the position that "carrier medium" includes signals and that signals are not statutory. Claim 801 has been amended to recite "a computer readable storage medium comprising program instructions stored thereon". Applicant submits that amended claim 801 is directed to patentable subject matter under 35 U.S.C. § 101.

D. The Claims are Not Obvious over Borghesi in view of Jernberg under 35 U.S.C. § 103(a)

The Examiner rejected claims 753, 755-759, 761-763, 765-767, 769, 770, 776-779, 786, 787, 794, 800, 801, 849, 850, and 852 under 35 U.S.C. 103(a) as obvious over 5,950,169 to Borghesi et al. (hereinafter "Borghesi") in view of U.S. Patent No. 6,336,096 to Borghesi (hereinafter "Jernberg"). Applicant respectfully disagrees with this rejection for at least the following reasons.

In order to reject a claim as obvious, the Examiner has the burden of establishing a *prima facie* case of obviousness. *In re Warner et al.*, 379 F.2d 1011, 154 U.S.P.Q. 173, 177-178 (C.C.P.A. 1967). To establish a *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. (emphasis added) *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP § 2143.03.

Independent Claim 753

The claim 753 recites a combination of features including:

providing claim data regarding a vehicle accident to a computer system via a graphical user interface;

providing data regarding at least one vehicle involved in the vehicle accident to the computer system via the graphical user interface;

providing an assessment of the vehicle accident to the computer system via the graphical user interface, the assessment of the vehicle accident comprising an assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident;

displaying a consultation report via the graphical user interface, wherein displaying a consultation report comprises displaying the assessment of the liability of the insured party; and

storing the claim data regarding the vehicle accident, the data regarding at least one vehicle involved in the vehicle accident, and the assessment of the vehicle accident in a memory associated with the computer system.

The cited art does not appear to teach or suggest at least these features of claim 753, in combination with the other features of claim 753.

The Examiner admits that Borghesi fails to disclose the above-quoted feature of claim 753. With respect to the above-quoted feature, the Examiner relies on Jernberg, col. 3, lines 63-65. Jernberg states:

This invention relates to a system and method for evaluating liability and settlement opportunities, and more particularly, to a system and method for concurrently evaluating environmental liability and settlement

opportunities among multiple potential responsible parties (PRPs) and multiple insurers at multiple environmental sites.
(Jernberg, column 3, lines 52-67)

Many PRPs may have multiple insurers, covering different periods of risk. Time of risk data and time of insurance coverage data is calculated. Time of risk is the time for which the particular PRP has potential legal liability for events or damage at the environmental site. A PRP's involvement at the site is some period of contact at the site which results in legal liability to the PRP. The actual extent of a PRP's involvement is a factual determination which may depend on the particular theory of law applied. Time of coverage is the time each insurance policy was in effect. The probable allocation of total insurance liability among various insurers for a PRP is calculated. The proportionate share of liability that might be allocated to the PRP and/or to uninsured periods is calculated. The state adjustment factor is applied to this amount and the expected normal liability of each party is calculated (the expected "normal liability").
(Jernberg, column 3, lines 52-67)

Applicant disagrees that the cited section of Jernberg teaches the above-quoted feature of claim 753. Jernberg discloses potential responsible parties ("PRPs") having multiple insurers covering different periods of risk. Jernberg does not teach or suggest an assessment of vehicle accident including a proportion of liability for a person involved in the vehicle accident. This is acknowledged by the Examiner in the Examiner's Answer. The Examiner relies on Borghesi, in combination with Jernberg, to teach at least this feature.

Applicant maintains their position that Borghesi is not properly combinable with Jernberg. Borghesi appears to be directed to a method and system for processing insurance claims relating to damaged automobiles for use by insurance companies, appraisers, repair shops, salvage yards and other support industries. For example, Borghesi states:

The present invention provides for a comprehensive method and system for processing insurance claims for use by insurance companies as well as appraisers, repair shops, salvage yards and other support industries related to insurance claim processing and resolution. One aspect of the present invention includes a method having the steps of first providing a remote computer and a computer in the home office of an insurance company that are in communication over a wide area

network. An insurance claim datafile containing all data pertinent to an insurance claim is generated at the remote computer....

In a preferred embodiment, the datafile contains data on the insured, including policy information; data on a claim, such as the extent of damage or injury; and data on satisfying a claim including repair estimates and total loss valuation of, for example, an automobile. Further, the preferred method includes the additional step of generating an event log that tracks all actions taken on a claim datafile. The method also preferably includes monitoring calculations of repair costs to determine if the repairs are approaching or exceeding the total loss valuation of a vehicle.

(Borghesi, Col. 2, line 64 – Col. 3, line 2)

Jernberg appears to be directed to a method of evaluating environmental liability for responsible parties. For example, Jernberg states:

A system and method of evaluating liability among multiple potential responsible parties (PRPs) and their insurers relating to multiple environmental sites according to the invention supports mediating and arranging settlements of environmental cleanup liability between PRPs and insurers and in appropriate cases between multiple PRPs.

(Jernberg, Col. 2, line 64 – Col. 3, line 2)

Borghesi appears to teach that certain information (e.g., policy information; data on a claim, such as the extent of damage or injury; and data on satisfying a claim including repair estimates and total loss valuation of, for example, an automobile) is provided to a computer for storage as a datafile. Borghesi does not appear to teach or suggest providing an “assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident.” Furthermore, Borghesi does not appear to teach or suggest any method of determining the “assessment of the liability.” Borghesi or Jernberg do not appear to teach or suggest any method of determining and, therefore, providing an assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident. Combining the software of Borghesi with the software of Jernberg would not provide all of the features of Applicant’s claims. Specifically, there is no taught or suggested method of providing liability estimates in either reference.

Applicant submits that Borghesi – a patent that describes a method and system for processing insurance claims relating to damaged automobiles, and Jernberg – a patent that describes the determination of environmental liability between parties - are not properly combinable because they relate to very different fields. Applicant submits that there is no motivation for a person of ordinary skill in the art to try and combine a patent directed to insurance claim workflow for automobile repairs with a patent directed to environmental liability.

Applicant's claims include the claimed feature of "assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident." Borghesi does not appear to teach how to obtain or perform this assessment. Even if Jernberg, for arguments sake only, teaches the assessment of liabilities, there is no motivation to modify this feature for vehicle accidents or any suggestion that this would be possible. The Examiner appears to be picking and choosing isolated features of Borghesi and combining some of these features with Jernberg, and creating additional features that are not taught in either reference. Without the benefit of Applicant's teachings, however, the Examiner would not be able to reproduce all of Applicant's claimed features. Moreover, the Examiner may not to "use hindsight reconstruction to pick and chose among isolated disclosures in the prior art to deprecate the claimed invention." Id. at 1600.

Applicant further submits that applying the teachings of Jernberg to Borghesi would not create a sensible program without untaught modification of either the software of Jernberg or Borghesi. For example, Jernberg does not provide any motivation to modify the disclosed software to be applicable to the field of liability determination for vehicle accidents. The Office Action takes the position that "it would have been obvious at the time of the invention to incorporate the teachings of Borghesi with those of Jernberg with the motivation of evaluating liability among multiple parties and their insurers (Jernberg: col 2, lns 25-28)." Applicant submits, however, that the "technique" taken from Borghesi would be the claim processing system for vehicle repairs, which does not appear to be readily adaptable to the environmental

liability software of Jernberg. For at least these reasons, Applicant maintains that Jernberg and Borghesi are not properly combinable.

For at least these reasons, Applicant submits that claim 753 is allowable over the cited art.

Independent Claim 800

Claim 800 recites a combination of features including:

providing an assessment of the vehicle accident via the graphical user interface, the assessment of the vehicle accident comprising an assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident

For at least the same reasons cited above for claim 753, Applicant submits that claim 800 is patentable over the cited art.

Independent Claim 801

Claim 801 recites a combination of features including:

providing an assessment of the vehicle accident via the graphical user interface, the assessment of the vehicle accident comprising an assessment of the liability of an insured party involved in the accident as a proportion of the total liability for the accident

For at least the same reasons cited above for claim 753, Applicant submits that claim 801 is patentable over the cited art.

Claim 756

Claim 756 recites a combination of features including, “wherein the consultation report comprises a range of liability for an insured party involved in the vehicle accident, wherein the liability is a proportion of the total liability for the accident.” Applicant submits that the cited art does not appear to teach or suggest this feature, in combination with the features of independent claim 753, for at least the reasons cited above.

Claim 765

Claim 765 recites a combination of features including, “wherein the claim data comprises content of a police report regarding the vehicle accident.” Applicant submits that the cited art does not appear to teach or suggest this feature, in combination with the features of independent claim 753, for at least the reasons cited above. Further, the Examiner relies on Borghesi, column 4, lines 47-63 for this feature. The cited portion of Borghesi states:

The workfile contains all the necessary information for field processing of insurance claims. This information includes administrative information that details the loss involved, the type of inspection done, any information from the inspection, and the particular adjuster assigned the claim. Policy information including the party names, statements from those at the scene and a chosen or preferred repair site for the vehicle is maintained with the administration information. The datafile also retains vehicle information describing the vehicle, identification, year, make, model, style and engine as well as options of the vehicle. Repair estimates are also contained in the workfile for repair including prior damage information, reference to recycled parts original equipment manufacturer (OEM) parts and repaired parts. The workfile retains further information related to taxes, labor rates, discounts, and other expenses involved in repairing a vehicle.
(Borghesi, column 4, lines 47-63)

Borghesi discloses a workfile containing “all the necessary information for field processing” of an insurance claim. Borghesi does not appear to teach or suggest claim data that includes the content of a police report. As such, Applicant submits that the cited art does not appear to teach or suggest at least the above-quoted feature of claim 765.

Claim 767

Claim 767 recites a combination of features including, “wherein the claim data comprises a jurisdiction in which the vehicle accident occurred.” Applicant submits that the cited art does not appear to teach or suggest this feature, in combination with the features of independent claim 753, for at least the reasons cited above. Further, the Examiner relies on Borghesi, column 4, lines 47-63 for this feature (quoted above with respect to claim 765). Borghesi discloses a workfile containing “all the necessary information for field processing” of an insurance claim. Borghesi does not appear to teach or suggest claim data that includes a jurisdiction in which the vehicle accident occurred. As such, Applicant submits that the cited art does not appear to teach

or suggest at least the above-quoted feature of claim 767.

Claim 776

Claim 776 recites a combination of features including, “wherein the assessment of the vehicle accident comprises an impact point of the at least one vehicle involved in the vehicle accident, wherein the impact point is selected by the user, wherein the proportion of liability of the insured party is at least partially based on the impact point.” Applicant submits that the cited art does not appear to teach or suggest this feature, in combination with the features of independent claim 753, for at least the reasons cited above. Further, the Examiner relies on Borghesi, column 4, lines 47-63 for this feature. With respect to the phrase: “wherein the proportion of liability of the insured party is at least partially based on the impact point”, the Examiner relies on “Borghesi, column 13, lines 15-20, i.e. the total liability for the repair will depend on the cost of the impacted part, and more expensive part will represent a higher proportion of liability.” Applicant disagrees that Borghesi teaches or suggests a proportion of liability of an insured party involved in the accident. As stated in Applicant’s specification:

As used herein, the term “liability” generally refers to an amount for which a person or party is responsible or obligated. In an embodiment, liability in an accident may be expressed in a ratio or percentage (e.g., there is a total of 100% liability that can be attributed to persons, parties, or other factors such as weather, etc.).

(Applicant’s specification, page 18, lines 2-6)

The Examiner states “a more expensive part will represent a higher proportion of liability”. Applicant submits, however, that claim 776 is directed to a proportion of liability of an insured party, not to a proportion of the cost of a part relative to the total liability for vehicle repair. In any case, the Borghesi does not appear to discuss the cost of a part as a proportion of total liability. As such, Applicant submits that the cited art does not teach or suggest the features of claim 776.

Claim 794

Claim 794 recites, in part, “wherein the assessment of the vehicle accident comprises a determination of whether the at least one vehicle involved in the vehicle accident was defective.”

Applicant submits that the cited art does not appear to teach or suggest this feature, in combination with the features of independent claim 753, for at least the reasons cited above. Further, the Examiner relies on Borghesi, column 5, lines 11-15 for this feature. The cited portion of Borghesi states:

After the vehicle inspection has been recorded, at least two calculations may be made with regard to the vehicle. First, information from the vehicle inspection is used to determine a vehicle valuation 14 which values the vehicle based on several factors including age of the vehicle and prior damage. A damage estimate 16 is also made of the vehicle to attempt to define the repairs necessary to bring the vehicle back to its previous state. If the repair estimate approaches the vehicle valuation, the adjuster may decide to total out the vehicle.
(Borghesi, column 5, lines 11-15)

The Examiner states: “reads on ‘...repairs necessary to bring the vehicle back to its previous state’”. Thus, the cited portion of Borghesi relates to repairs required to a vehicle damaged in an accident. Claim 794, however, refers to a determination of whether the at least one vehicle involved in the vehicle accident was defective, not to the extent of any required repairs to the vehicle. Applicant submits that the cited art does not appear to teach or suggest at least this feature of claim 794.

Claim 849

Claim 849 recites, in part, “wherein the assessment of liability of the insured party comprises a base liability, and upper range a liability, and a lower range of liability.” Applicant submits that the cited art does not appear to teach or suggest this feature, in combination with the features of independent claim 753, for at least the reasons cited above. Further, the Examiner relies on Jernberg, column 4, lines 5-11 for this feature. The cited portion of Jernberg states:

The settlement data is compared to the risk data and the expected normal liability for each PRP and insurer. A calculation is made to determine absolute and percentage deviation between each party's settlement position (offer or demand) and the expected normal liability of each party. This calculation is used by the third party to determine settlement groupings and priorities.
(Jernberg, column 4, lines 5-11)

Jernberg discloses calculations that include determination of absolute and percentage

deviation between a settlement position and the “expected normal liability” of a party. Jernberg does not appear to teach or suggest an assessment of liability of the insured party including a base liability, an upper range of liability, and a lower range of liability. As such, Applicant submits that the cited art does not appear to teach or suggest at least the above-quoted feature of claim 849.

E. The Claims are Not Obvious over Borghesi in view of Jernberg and in further view of Hall under 35 U.S.C. § 103(a)

The Examiner rejected claims 772-775, 780, 782-785, 788-793, 795, 796, 799, 845, and 851 under 35 U.S.C. 103(a) as obvious over Borghesi in view of Jernberg as applied to claim 753 and further in view of U.S. Patent No. 6,223,125 to Hall (hereinafter “Hall”). Applicant respectfully disagrees with this rejection for the following reasons.

Claim 795

Claim 795 recites a combination of features including, “wherein the assessment of the vehicle accident comprises a determination of whether roadway debris was present at a location of the vehicle accident.” The Examiner relies on Hall, column 22, lines 7-27 for this feature. The Examiner states: “Hall: col 22, lns 2-27, reads on “...deactivation of Vehicle Restrictors...”).

The cited portion of Hall states:

An emergency vehicle is equipped with a concealed Transmitter 30" matched to the frequency of a Receiver 30' that provides input into the Controller 10. The Transmitter I Receiver pair serves as the Trigger Sensor 30. The Transmitter 30" is integrated with the siren of the emergency vehicle so that the Transmitter 30" is only active when the siren is on. Thus the activity of the siren 40a provides Conditional Control 40. This feature prevents the emergency vehicle from disabling the Collision Avoidance System when the vehicle is not responding to an emergency call. Even emergency vehicles must comply with the standard traffic regulations in the absence of an emergency.

The functions of the system components in executing the Emergency Vehicle PassThrough Control 100 are the same as the previous implementations except that the principle output response is deactivation

of Vehicle Restrictors instead of activation. As the emergency vehicle nears a Collision Avoidance System installation with an active siren 40a, the Transmitter 30" communicates wireless, Coded Transmissions 30"" to the Receiver 30'. The Receiver 30' indicates to the Controller 10 that a deactivation signal was transmitted from an approaching emergency vehicle in an emergency mode. The Controller 10 deactivates all Vehicle Restrictors to an inactive state. Shortly after the passing of the emergency vehicle the Controller 10 will restore the system and the Vehicle Restrictors 20 to normal operation.
(Hall, column 22, lines 2-27)

Hall discloses deactivating "Vehicle Restrictors" on a road. Hall does not appear to teach or suggest a determination of whether roadway debris was present at a location of the vehicle accident. As such, Applicant submits that the cited art does not appear to teach or suggest at least the above-quoted feature of claim 796.

Applicant maintains their position that Jernberg is not properly combinable with Hall. As noted in response to the previous Office Action, Jernberg appears to be directed to a method of evaluating environmental liability for responsible parties. For example, Jernberg states:

A system and method of evaluating liability among multiple potential responsible parties (PRPs) and their insurers relating to multiple environmental sites according to the invention supports mediating and arranging settlements of environmental cleanup liability between PRPs and insurers and in appropriate cases between multiple PRPs.
(Jernberg, Col. 2, line 64 – Col. 3, line2)

Applicant submits that Hall – a patent that describes a vehicle collision avoidance system, Jernberg – a patent that describes the determination of environmental liability between parties, and Borghesi – a patent that describes a method and system for processing insurance claims relating to damaged automobiles are not properly combinable because they relate to very different fields. Applicant submits that there is no motivation for a person of ordinary skill in the art to try and combine a patent directed to environmental liability or a patent directed to insurance claim workflow for automobile repairs with a patent directed to a collision avoidance system.

Applicant further submits that applying the teachings of Hall to Jernberg and Borghesi would not create a sensible program without untaught modification of either the software of Hall, Jernberg, or Borghesi. For example, as noted above, Jernberg does not provide any motivation to modify the disclosed software to be applicable to the field of liability determination for vehicle accidents. For at least these reasons, Applicant maintains that Borghesi, Jernberg and Hall are not properly combinable.

Claim 796

Claim 796 recites a combination of features including, “wherein the assessment of the vehicle accident comprises a determination of whether roadway defects were present at a location of the vehicle accident.” The Examiner relies on Hall, column 22, lines 7-27 (quoted above with respect to claim 795) for this feature. The Examiner states: “Hall: col 22, lns 2-27, reads on “...deactivation of Vehicle Restrictors...”. Hall discloses deactivating “Vehicle Restrictors” on a road. Hall does not appear to teach or suggest a determination of whether roadway defects were present at a location of the vehicle accident. As such, Applicant submits that the cited art does not appear to teach or suggest at least the above-quoted feature of claim 796.

Claim 799

Claim 799 recites a combination of features including, “wherein the assessment of the vehicle accident comprises a determination of whether occupants in the at least one vehicle involved in the vehicle accident were wearing seatbelts.” The Examiner relies on Hall, column 7, lines 16-20 for this feature. The Examiner states: “Hall: col 7, lns 16-20 reads on “...integrates...to the standard safety systems...”. The cited portion of Hall states:

The sensors used for Conditional Control are of the same technology as described for the Trigger Sensors. A signal from a traffic command source (such as traffic lights, caution lights, and safety gates) integrates and synchronizes the Collision Avoidance System to the standard safety systems that the Collision Avoidance System is supporting.
(Hall, column 7, lines 16-20)

Hall discloses integrating a collision avoidance system to “standard safety systems that the Collision Avoidance System is supporting”. Hall does not appear to teach or suggest a

determination of whether occupants in the at least one vehicle involved in the vehicle accident were wearing seatbelts.

Claim 847

Claim 847 recites a combination of features including, “displaying a plurality of combinations of a roadway configuration and an accident type, and receiving a selection by a user of one of the combinations for the vehicle accident being assessed, wherein the assessment of liability for the vehicle accident is based on the selected combination.” The Examiner states:

Borghesi further teaches:

Receiving a selection by a user of combinations for the vehicle accident being assessed (Borghesi: col 12, lns 14-36, i.e. combinations of damaged parts)

wherein the assessment of liability for the accident is based on the selected combination (Borghesi: col 12, lns 37-38, assessment of liability reads on “estimate” and the combination of parts is used to determine the estimate).

The Examiner admits that “Borghesi (and Jernberg) fails to each the remaining features which are taught by Hall...”. Applicant submits that the feature the Examiner quoted above “Receiving a selection by a user of combinations for the vehicle accident being assessed” is not recited in claim 847. Claim 847 recites a combination of features including:

displaying a plurality of combinations of a roadway configuration and an accident type, and receiving a selection by a user of one of the combinations for the vehicle accident being assessed (emphasis added)

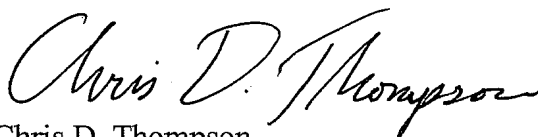
Thus, claim 847 recites displaying combinations of specific elements, namely, a roadway configuration and an accident type, and selecting a combination of the specific elements, not displaying and selecting merely “combinations” of unspecified things for a vehicle accident, as the Examiner’s rejection states. Applicant submits that Borghesi’s teaching of combinations of damaged parts does not teach or suggest combinations of a roadway configuration and an accident type. Moreover, Hall does not appear to teach or suggest a user making a selection from displayed combinations of a roadway configuration and accident type. For at least these reasons, Applicant submits that the cited art does not teach or suggest the above quoted features of claim 847.

G. Additional Remarks

Based on the above, Applicant submits that all claims are in condition for allowance. Favorable reconsideration is respectfully requested.

If any extension of time is required, Applicant hereby requests the appropriate extension of time. If any fees are omitted or if any additional fees are required or have been overpaid, please appropriately charge or credit those fees to Meyertons, Hood, Kivlin, Kowert & Goetzel Deposit Account No. 50-1505/5053-46912/EBM.

Respectfully submitted,



Chris D. Thompson
Reg. No. 43,188

Attorney for Applicant

MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL
P.O. BOX 398
AUSTIN, TX 78767-0398
(512) 853-8800 (voice)
(512) 853-8801 (facsimile)
Date: 2-9-2009